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ISB No. 1018

Attorneys for Applicant,  
A & B Irrigation District

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF	)	<b>REQUEST FOR APPROVAL</b>
WATER TO WATER RIGHT NOS.	)	<b>OF MITIGATION PLAN OF</b>
36-02356A, 36-07210, AND 36-07427.	)	<b><u>A &amp; B IRRIGATION DISTRICT</u></b>
_____	)	

COMES NOW A & B Irrigation District, an irrigation district duly formed under the laws of the State of Idaho, of P. O. Box 675, 414 11<sup>th</sup> Street, Rupert, Idaho 83350, by and through its attorney of record, and submits the following proposed Mitigation Plan, to-wit:

1. That pursuant to a letter addressed to A & B Irrigation District from Cindy Yenter, Watermaster of Water District 130, which letter ultimately was received by A & B Irrigation District on May 26, 2005, A & B Irrigation District, the equitable owner of the following water rights was advised that it would be required to provide a mitigation plan to offset the entirety of the depletion to the ESPA under such rights or to provide Blue Lakes Trout Farms

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3 with a replacement water supply to offset depletions of flows to Alpheus Creek caused by ground  
4 water pumping by A & B Irrigation District under the below water rights, pursuant to the  
5 Director's Order issued May 19, 2005 in the above-entitled matter. The water rights listed in  
6 said letter are:

7           36-15127B for the irrigation of 1,751.5 acres

8           36-15193B for the irrigation of 18.9 acres

9           36-15194B for the irrigation of 152.4 acres

10          36-15195B for the irrigation of 135.6 acres

11          36-15196B for the irrigation of 4.7 acres

12          Total Acres: 2,063.1

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14           2.       Said water rights have priorities of April 1, 1984, April 1, 1965, April 1,  
15 1968, April 1, 1978, and April 1, 1981, respectively, subject to an appeal as to the source and the  
16 date of subordination, if any, which is now on file with the Idaho Supreme Court.

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18           3.       The 2,063.1 acres covered by the above water rights are entitled to divert  
19 four (4) acre-feet per acre each year, or a total of 8,252.4 acre-feet, and the annual consumptive  
20 use of water in the irrigation of said 2,063.1 acres is 1.6 acre-feet per acre.

21           4.       A & B Irrigation District presently holds an equitable interest in Water  
22 Right No. 01-02064 for the storage of 47,593 acre-feet of water in American Falls Reservoir  
23 when the active capacity of American Falls Reservoir is 1.7 million acre-feet, and an equitable  
24 interest in Water Right No. 01-02068 for the storage of 90,800 acre-feet in Palisades Reservoir,  
25 which reservoirs are owned and operated by the United States of America, Department of  
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3 Interior, Bureau of Reclamation.

4           5.     A & B Irrigation District is the equitable owner of Water Right No. 36-  
5 02080, which entitles A & B Irrigation District to divert 1100 cfs from the Eastern Snake Plain  
6 Aquifer for the irrigation of 66,683.2 acres, which water right is held in the name of the United  
7 States of America, Department of Interior, Bureau of Reclamation.

8           6.     The above water rights are used for the irrigation of lands within A & B  
9 Irrigation District pursuant to a contract with the United States of America, Department of  
10 Interior, Bureau of Reclamation whereby A & B Irrigation District operates and maintains said  
11 project, and is in the process of paying for its landowners the construction costs of the project,  
12 including its pro rata share of storage facility construction and all of the operation and  
13 maintenance costs of that portion of the project transferred to A & B Irrigation District.

14           7.     A & B Irrigation District has converted 1,377.8 acres irrigated under the  
15 above ground water rights to irrigation from surface water using storage water under the storage  
16 rights above referred to, which conversion fully mitigates any alleged injury to senior surface  
17 water rights or senior ground water rights, as such conversion has reduced the consumptive use  
18 of ground water on said acres at the rate of 1.6 acre-feet per acre, for a total savings in  
19 consumptive use of ground water in the amount of 2,204.48 acre-feet.

20           8.     The average annual surface water diversion use on the above 1,377.8 acres  
21 within A & B Irrigation District that have been converted from ground water to surface water is  
22 3.7 acre-feet per acre per annum. This conversion therefore provides a minimum of 2.1 acre-feet  
23 per acre, or a total of 2,893.38 acre-feet, of incidental recharge which would not have occurred in  
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3 the absence of such conversion of ground water use to surface water use, which incidental  
4 recharge is sufficient to offset the depletive effect of ground water withdrawal from the Eastern  
5 Snake Plain Aquifer for the irrigation of the balance of 685.3 acres subject to the delivery call,  
6 which would consumptively use only 1,096.48 acre-feet per annum at the consumptive rate of 1.6  
7 acre-feet per acre.

8  
9 9. A & B Irrigation District further operates and maintains a system-wide  
10 drainage system whereby it recaptures irrigation waste water by its drainage system, which water  
11 is used to irrigate more than 2,063.1 acres originally entitled to use ground water from the  
12 Eastern Snake Plain Aquifer for irrigation of said lands.

13 10. The use of irrigation waste water and drain water within A & B Irrigation  
14 District provides replacement water for lands that would otherwise be irrigated with ground  
15 water under the ground water rights of A & B Irrigation District, and such replacement water use  
16 is sufficient to offset any depletive effect of ground water withdrawal under the above-described  
17 ground water rights at such time and place as is necessary to satisfy the rights of diversion from  
18 the ground water source, the Eastern Snake Plain Aquifer. The issue as to whether or not  
19 irrigation waste water and drainage water recaptured by A & B Irrigation District is to be treated  
20 as ground water or surface water is an issue before the Idaho Supreme Court, waiting decision.  
21

22 11. Any attempt to curtail the use of recaptured irrigation waste and drain  
23 water for the irrigation of lands that otherwise are entitled to be irrigated with ground water from  
24 the Eastern Snake Plain Aquifer would be futile, as there is no method by which the use of such  
25 irrigation return flow and waste water can be curtailed, and if such water is not used for irrigation  
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3 and as a replacement water source, more of the water will be lost by evaporation than will be  
4 used consumptively in irrigation with said water. Therefore, the senior-priority surface water  
5 rights, including the surface water rights of A & B Irrigation District, because of physical and  
6 hydrologic reasons, cannot be satisfied within a reasonable time or at any time by a call for  
7 immediately curtailing diversions of irrigation waste water and drain water that would result in  
8 waste of the water resource.

9  
10 12. Curtailment in the irrigation of lands with ground water under the ground  
11 water rights held by A & B Irrigation District, excluding those lands above described whereby a  
12 substitute or alternative source of surface water was provided, has occurred for 437.2 acres.  
13 These acres are located in the following areas, to-wit:

14 TOWNSHIP 8 SOUTH, RANGE 25 EAST OF THE BOISE MERIDIAN

15 Section 22: Tract A – 125.3 acres

16 Section 21: Tract A – 44 acres

17 TOWNSHIP 8 SOUTH, RANGE 24 EAST OF THE BOISE MERIDIAN

18 Section 15: Tract D – 61 acres

19 Section 3: Tracts G/J – 5 acres

20 Sections 29/32: Tract D – 17.2 acres

21 TOWNSHIP 8 SOUTH, RANGE 23 EAST OF THE BOISE MERIDIAN

22 Sections 11/12/13/14: Tract M – 5 acres

23 Section 13: Tract C – 5 acres

24 Sections 4/5: Tract G – 10 acres

25 Section 26: Tract D – 1 acre

26 TOWNSHIP 9 SOUTH, RANGE 21 EAST OF THE BOISE MERIDIAN

27 Section 5: SE¼ - 160 acres

28 Curtailment of the irrigation of these lands has occurred for the first time in 2005,

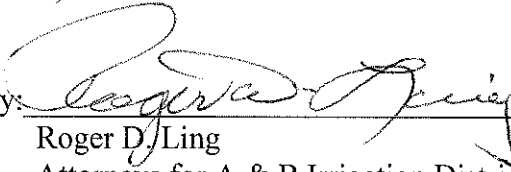
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3 or was a continuation of a curtailment that was accomplished and part of the A & B Irrigation  
4 District mitigation plan submitted in response to the Rangen Curtailment Order in 2004, and such  
5 curtailment is further mitigation in mitigation plans, past or future.

6 13. The above mitigation plan submitted by A & B Irrigation District, who is  
7 the holder of the junior-priority ground water rights above described, identifies actions and  
8 measures to prevent holders of senior-priority surface water rights or ground water rights from  
9 suffering material injury, regardless of the definition, caused by the diversion and use of water by  
10 A & B Irrigation District of ground water within an area having a common ground water supply.

11  
12 WHEREFORE, A & B Irrigation District requests that the Director fully consider  
13 the above mitigation plan and that the mitigation plan be approved in regard to the delivery call  
14 above referred to and made in this proceedings by surface water users. It is further requested that  
15 in the event more specific information is necessary or desired, A & B Irrigation District requests  
16 the opportunity to provide such additional information, including identification of specific  
17 location of acres being irrigated with recaptured irrigation waste and drain water and the specific  
18 location of the lands formerly irrigated with ground water which are now being provided an  
19 alternative source of water from surface water sources.  
20

21 Respectfully submitted this 26<sup>th</sup> day of May, 2005.

22  
23 LING, ROBINSON & WALKER

24 By:   
25 Roger D. Ling  
26 Attorneys for A & B Irrigation District  
27

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 26th day of May, 2005, served copies of the foregoing *Request for Approval of Mitigation Plan of A & B Irrigation District* upon the following parties by the method indicated below:

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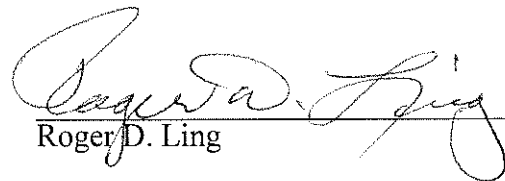
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